



**6712-01**

## **FEDERAL COMMUNICATIONS COMMISSION**

### **47 CFR Part 73**

**[MB Docket No. 09-52; FCC 11-190]**

Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; announcement of effective date.

**SUMMARY:** In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection requirements and form revisions associated with the Commission's rules contained in the Third Report and Order, FCC 11-190, pertaining to the policies to promote rural radio service and to streamline allotment and assignment procedures. This notice is consistent with the Third Report and Order, which stated that the Commission would publish a document in the Federal Register announcing the effective date of these rules and form changes.

**DATES:** 47 CFR 73.3573 and FCC Form 301, published at 77 FR 2916, January 20, 2012, are effective **[INSERT DATE 30 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]**.

**FOR FURTHER INFORMATION CONTACT:** Cathy Williams on (202) 418-2918 or via email to: [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This document announces that, on April 27, 2012, OMB approved, for a period of three years, the information collection requirements contained in the Commission's Third Report and Order, FCC 11-190, published at 77 FR 2916, January 20, 2012. The OMB Control Number is 3060-0027. The Commission publishes this notice as an announcement of the effective date of the rule section and form revisions.

### **Synopsis**

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on April 27, 2012, for the information collection requirements contained in the Commission's rule at 47 CFR 73.3573 and form revisions to FCC Form 301.

Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060-0027.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Pub. L. 104-13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

**OMB Control Number:** 3060-0027.

**Title:** Application for Construction Permit for Commercial Broadcast Station, FCC Form 301.

**Form Number:** FCC Form 301.

**OMB Approval Date:** April 27, 2012.

**OMB Expiration Date:** April 30, 2015.

**Type of Review:** Revision of a currently approved collection.

**Respondents:** Business and other for-profit entities; Not for profit entities; State, local or Tribal governments.

**Number of Respondents and Responses:** 4,604 respondents and 8,040 responses.

**Estimated Time per Response:** 1 - 6.25 hours.

**Frequency of Response:** On occasion reporting requirement; Third party disclosure requirement.

**Total Annual Burden:** 20,497 hours.

**Total Annual Costs:** \$90,659,382.

**Obligation to Respond:** Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

**Nature and Extent of Confidentiality:** There is no need for confidentiality with this collection of information.

**Privacy Impact Assessment(s):** No impact(s).

**Needs and Uses:** On January 28, 2010, the Commission adopted a First Report and Order and Further Notice of Proposed Rulemaking (“First R&O”) in MB Docket No. 09-52, FCC 10-24. To enhance the ability of federally recognized Native American Tribes to provide vital radio services to their citizens on Tribal lands, in the First R&O the Commission established a Tribal Priority for use in its radio licensing procedures. On March 3, 2011, the Commission adopted a Second Report and Order (“Second R&O”), First Order on Reconsideration, and Second Further Notice of Proposed Rule Making in MB Docket No. 09-52, FCC 11-28. On December 28, 2011, the Commission adopted a Third Report and Order in MB Docket No. 09-52, FCC 11-190 (“Third R&O”). In the Third R&O the Commission further refined the use of the Tribal Priority in the commercial FM context, specifically adopting a “threshold qualifications” approach to commercial FM application processing.

In the commercial FM context, the Tribal Priority is applied at the allotment stage of the licensing process. A Tribe or Tribal entity initiates the process by petitioning that a new Tribal Allotment be added to the FM Table of Allotments using the Tribal Priority. A petitioner seeking to add a Tribal Allotment to the FM Table of Allotments, like all other

FM allotment proponents, must file FCC Form 301 when submitting its Petition for Rule Making. Under the new “threshold qualification” procedures adopted in the Third R&O, once a Tribal Allotment has been successfully added to the FM Table of Allotments using the Tribal Priority through an FM allocations rulemaking, the Commission will announce by Public Notice a Threshold Qualifications Window (“TQ Window”). During the TQ Window, any Tribe or Tribal entity that could qualify to add that particular Tribal Allotment may file an FCC Form 301 application for that Tribal Allotment. Such an applicant must demonstrate that it meets all of the eligibility criteria for the Tribal Priority, just as the original Tribal Allotment proponent did at the allotment stage. If it wishes its previously filed Form 301 application to be considered at this stage, then during the TQ Window the original Tribal Allotment proponent must submit notice to process its pending Form 301 application immediately.

If only one acceptable application is filed during the TQ Window, whether by the original Tribal allotment proponent submitting notification to process its previously filed Form 301, or by another qualified applicant, that application will be promptly processed and the Tribal Allotment will not be auctioned. In the event that two or more acceptable applications are filed during the TQ Window, the Commission will announce a limited period in which the parties may negotiate a settlement or bona fide merger, as a way of resolving the mutual exclusivity between their applications. If a settlement or merger is reached, the parties must notify the Commission and the staff will process the surviving application pursuant to the settlement or merger. If a settlement cannot be reached among the mutually exclusive applicants, the Tribal Allotment will be auctioned during the next scheduled FM auction. At that time, only the applicants whose applications were

accepted for filing during the TQ Window, as well as the original Tribal Allotment proponent, will be permitted to bid on that particular Tribal Allotment. This closed group of mutually exclusive TQ Window applicants must comply with applicable established auction procedures.

In the event that no qualifying party applies during the TQ Window, and the original Tribal allotment proponent requests that its pending Form 301 application not be immediately processed, the Tribal Allotment will be placed in a queue to be auctioned in the normal course for vacant FM allotments. When the Tribal Allotment is offered at auction for the first time, only applicants meeting the “threshold qualifications” may specify that particular Tribal Allotment on FCC Form 175, Application to Participate in an FCC Auction (OMB Control No. 3060-0600). Should no qualifying party apply to bid or qualify to bid on a Tribal Allotment in the first auction in which it is offered, then the Tribal allotment will be offered in a subsequent auction and any applicant, whether or not a Tribal entity, may apply for the Tribal Allotment.

Consistent with actions taken by the Commission in the Third R&O, Form 301 has been revised to accommodate applicants applying in a TQ Window for a Tribal Allotment. As noted above, an applicant applying in the TQ Window, who was not the original proponent of the Tribal Allotment at the rulemaking stage, must demonstrate that it would have qualified in all respects to add the particular Tribal Allotment for which it is applying. Form 301 contains a new question in Section II-Legal titled “Tribal Priority-Threshold Qualifications.” An applicant answering “yes” to the question must provide an Exhibit demonstrating that it meets all of the Tribal Priority eligibility criteria. The

Instructions for the Form 301 have been revised to assist applicants with completing the responsive Exhibit.

In addition, Form 301 contains a new option under Section I-General Information-Application Purpose, titled “New Station with Petition for Rulemaking to Amend FM Table of Allotments using Tribal Priority.” A petitioner seeking to add a Tribal Allotment to the FM Table of Allotments must file Form 301 when submitting its Petition for Rule Making. This new Application Purpose field will assist the staff in quickly identifying Form 301 applications filed in connection with a petition to add a Tribal Allotment and initiating the “threshold qualification” procedures.

This information collection is being revised to accommodate applicants applying in a Threshold Qualifications Window for a Tribal Allotment that had been added to the FM Table of Allotments using the Tribal Priority under the new “threshold qualifications” procedures adopted in the Third R&O.

OMB approved the information collection requirements and form revisions for this collection on April 27, 2012.

Federal Communications Commission.

Bulah P. Wheeler,  
Deputy Manager,  
Office of the Secretary,  
Office of Managing Director.

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